Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1078

WORLD-WIDE VOLKSWAGEN CORPORATION and SEAWAY VOLKSWAGEN, INC.,

Petitioners,

v.

THE HONORABLE CHARLES S. WOODSON, District Judge of Creek County, State of Oklahoma, KAY ELOISE ROBINSON, EVA MAY ROBINSON, a minor, by and through her father and next friend, HARRY ROBINSON, GEORGE SAMUEL ROBINSON, a minor, by and through his father and next friend, HARRY ROBINSON, and HARRY ROBINSON, individually,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

I

Respondents' contention that this case is moot is frivolous. Petitioners, in accordance with Oklahoma practice, have at all times contested the power of the State of Oklahoma to assert jurisdiction over them. This new argument and the similarly unfounded claim of dilatory tactics are in-

terposed solely to divert this Court's attention from the very real constitutional issue raised by the decision of the Supreme Court of Oklahoma.

II

Respondents' discussion of prior federal and state court cases, rather than supporting the decision of the Oklahoma Supreme Court, underscores the necessity of review by this Court. The apparently exhaustive examination by respondents of over fifteen years of federal and state "long-arm" decisions has produced only one isolated case, *Reilly* v. *Phil Tolkan Pontiac, Inc.*, 372 F. Supp. 1250 (D.N.J. 1974), in which a court exercised jurisdiction over a non-resident dealer solely upon the ground that the dealer should have foreseen his product being taken by his customer into a distant forum.

It is respectfully submitted that the *Reilly* case, to the extent it is consistent with the present decision of the Oklahoma court, places an unconstitutional burden on local sellers of consumer goods. Neither the Oklahoma case nor the *Reilly* decision can be reconciled with the cases cited by petitioners, nor with the decision by the State of Florida in *Jack Pickard Dodge, Inc.* v. *Yarbrough*, 352 So.2d 130 (Fla. Dist. Ct. App. 1977). This conflict or potential for conflict among federal and state courts over basic principles of personal jurisdiction reinforces petitioners' request that the question be resolved by this Court. The fact that thousands of retailers throughout the country sell locally thousands of transportable products highlights the importance of forestalling prospective violations of the constitutional principles enunciated by this Court.

III

In each case cited by respondents, other than *Reilly*, a manufacturer defendant had undertaken some purposeful activity in the forum state or had derived economic benefits from his products being sold in the forum or to its residents. In none of these cases was the mere happenstance of the accident in the forum sufficient to sustain jurisdiction.

Respondents assert that there are no jurisdictionally cognizable differences between sellers of goods at different levels. This is simply untrue. A multi-billion dollar manufacturer engaged in national distribution is vastly different from the single owner business which sells the manufacturer's products to local customers in a single community of a single state. "[A] given set of circumstances establishes state jurisdiction over one type of defendant but not over the other." *Shaffer* v. *Heitner*, 433 U.S. 186, 204 n.19 (1977).*

IV

Respondents argue that this Court's decision in *Hanson* v. *Denckla*, 357 U.S. 235 (1958), no longer provides the framework for evaluating and determining the constitutional reach of state "long-arm" statutes. Despite Justice Goldberg's admonition in *Rosenblatt* v. *American Cyanamid Co.*, 86 S.Ct. 1, 15 L.Ed.2d 39 (1965), that *Hanson* meant what it said, and requires in every instance a defendant to have "taken voluntary action calculated to have an effect

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* As the Michigan Supreme Court has recently indicated, not even all manufacturers are to be treated alike. *Hapner* v. *Rolf Brauchli, Inc.*, 47 U.S.L.Week 2462 (Jan. 23, 1979). A small local manufacturer, selling to only two or three independent wholesalers, is not to be treated in the same manner as a vast manufacturing enterprise which has established a comprehensive franchise network.

in the forum state'' (86 S.Ct. at 4, 15 L.Ed.2d at 44), federal and state courts, as respondents' point out, have fashioned alternative tests of jurisdiction, which either eviscerate or ignore the *Hanson* mandate. This Court's recent reinforcement of jurisdictional boundaries in *Shaffer* shows that unconstitutional tests developed elsewhere must be abated. Only this Court can now rectify Oklahoma's unconstitutional result.

V

The term ''stream of commerce'' has an alluring quality surrounding it. To respondents, it is a powerful talisman which when incanted by them allegedly creates the requisite nexus between petitioners and Oklahoma. However, it is neither the constitutional test nor the factual basis in this case. If there is a thread connecting petitioners to Oklahoma, it was spun by the Robinsons, by their voluntary and intentional decision to travel through that state on their way to Arizona. This unilateral act does not supply the nexus required. *Hanson* v. *Denckla, supra,* 357 U.S. at 253.

VI

Questions relating to substantive liability, *forum non conveniens* and choice of law do not provide the basis for decision of the fundamental jurisdictional issue. For this, the courts must look solely to the acts of the defendant.

> ''[The State] does not acquire * * * jurisdiction by being the 'center of gravity' of the controversy, or the most convenient location for litigation. The issue is personal jurisdiction, not choice of law. It is resolved in this case by considering the acts of the [appellants].'' *Hanson* v. *Denckla, supra,* 357 U.S. at 254; *Shaffer* v. *Heitner, supra,* 433 U.S. at 215.

Conclusion

Respondents' brief confirms the existence in this case of important constitutional questions of personal jurisdiction that require review. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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